

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE: NATIONAL PRESCRIPTION
OPIATE LITIGATION**

MDL No. 2804

This document relates to:

Case No. 17-md-2804

Member Case # 1:18-op-45985-DAP

Judge Dan Aaron Polster

**J M SMITH CORPORATION’S MOTION FOR LEAVE TO FILE SUR-REPLY IN
RESPONSE TO PLAINTIFF MICHAEL MASIOWSKI’S REPLY IN SUPPORT OF
MOTION FOR LEAVE TO FILE AN UNTIMELY REPLACEMENT REPLY (ECF 6233)**

Defendant J M Smith Corporation (“Smith”) respectfully submits this Motion for Leave to File a Sur-reply in Response to Plaintiff Michael Masiowski’s (“Masiowski”) Reply in Support of his Motion for Leave to File an Untimely Replacement Reply (ECF No. 6233, the “Reply”).

Allowing leave to file a sur-reply is “appropriate” where a party brings up “new issues in his reply[.]” *Ferguson v. Lorillard Tobacco Co., Inc.*, 475 F.Supp.2d 725, 728, n.4 (N.D. Ohio, 2007). “Good cause for a sur-reply also exists where a party seeks to clarify misstatements contained in the reply brief.” *Canter v. Alkermes Blue Care Elect Preferred Provider Plan*, 593 F.Supp.3d 737, 744–45 (S.D. Ohio 2022) (cleaned up). Both grounds exist here.

Masiowski originally argued that the Court should excuse his failure to respond to Smith’s opposition to his motion for leave to amend because Smith filed its opposition on the master MDL docket only. (ECF 6217 at 3). In reply, he argues for the first time that the Court should *also* excuse him from monitoring the master MDL docket because Smith purportedly allowed the original opposition deadline to lapse and never communicated that it intended to oppose Masiowski’s motion. (Reply at 5-6). That baseless and novel argument is both legally wrong and predicated on factual inaccuracies.

Masiowski's shifting explanations and misstatements underscore his lack of diligence throughout this unnecessarily extended motion practice. They are also grounds to grant Smith leave to respond to them. *See Ferguson*, 475 F.Supp.2d at 728, n.4; *Canter*, 593 F.Supp.3d at 744–45.

WHEREFORE, Defendant J M Smith Corporation respectfully requests entry of an order (i) granting leave of Court to file the sur-reply appended hereto as **Exhibit A**; and (ii) granting such other and further relief as the Court deems just and proper.

Dated: July 28, 2025

Respectfully submitted,

FOX ROTHSCHILD LLP

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CERTIFICATE OF SERVICE

I certify that, on July 28, 2025, I electronically filed a copy of the foregoing with the Clerk of Court using the CM/ECF system, which sent notification of such filing to all counsel of record.

FOX ROTHSCHILD LLP

By: /s/ John J. Haggerty
John J. Haggerty, Esquire